



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 10393-23
Ref: Signature Date

████████████████████
████████████████████

Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 December 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 29 October 2001. You served for without incident until, on 21 November 2002, you were subject to nonjudicial punishment (NJP) for a violation of Article 112a due to wrongful use of an unspecified controlled substance.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 5 December 2002 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct," your

reenlistment code is “RE-4B,” and your separation code is “HKK,” which corresponds with a drug abuse separation.

Your previous application to the Naval Discharge Review Board was denied on 16 November 2006, wherein you similarly contended that you were experiencing emotional difficulties due to your grandmother’s death, your inability to see her due to operational commitments, and being ignored by your senior enlisted when you sought assistance. However, you also provided a detailed personal statement regarding the incident of your drug abuse misconduct which elaborated in relevant part that you procured what you referred to as “party favors” (illegal drugs) for a fellow sailor. You delivered the drugs to her, which you described as a powder that she then asked if you could melt and inject with her syringe, although you declined to assist. You also suggested that she sniff it and claimed she would not do so unless you did also, which you claim you agreed to due to peer pressure. This statement was recorded in its entirety in the final decision of the NDRB and, therefore, became a permanent part of your Official Military Personnel File.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge to “Honorable” and your contentions that you were struggling emotionally at the time of your misconduct and regret having made the biggest mistake in your life, your post-discharge behavior and success merits consideration of a grant of clemency because demonstrates that this incident was not definitive of who you are, nor do you believe that your past, present, and future should be defined by one mistake, you want your son to be proud of you and provided a letter from him regarding that concern, and you desire to pursue employment with the government, which might possibly require a security clearance and are concerned about the impact your misconduct and discharge may have. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement in which you claim that you have completed your Doctorate in Information Technology with a published dissertation and that you have co-authored a book in your field. You also state that you support veterans around you. Although you did not submit any documentary evidence to substantiate those specific contentions of accomplishments, you submitted several character letters. You also provided copies of private messages between yourself and a retired Rear Admiral from your LinkedIn account. Of note, those messages begin with you seeking a letter of support from him; however, he instead appears to have offered you advice regarding the information he recommended that you address in your application to the Board without providing the requested letter.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, with respect to your drug abuse offense, the Board observed conflicting information in the available evidence which caused the Board to question your candor. Specifically, the Board noted the detailed statement which you previously provided to the NDRB as definitive of your account of the incident which resulted in your drug abuse offense. Therein, you refer to “party favors” and an illicit substance comprised of powder. However, your letter of

support from a former service member, who worked with you at the time of your offense, states: “She went out, had some drinks, and in that moment of pain she smoked some pot.” The Board notes that this description of events differs starkly from the incident you described in 2006 when applying to the NDRB, to include the nature of the illicit substances as well as the scope of the offense. Rather, and notwithstanding that your NJP offense only referenced wrongful use without mention of wrongful distribution of controlled substances, you described the incident in a manner which reflected a casual familiarity with terminology for drugs as “party favors” and, far more serious, extended to procuring drugs for another service member. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/19/2024

